

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

2011 JUN 10 AM 11:27

UNITED STATES OF AMERICA,

Civil No. SA11MC0349 FB

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

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Petitioner,)
)
)
v.)
)
)
JOHN FERGUSON,) Date: June 22, 2011
)
) Time: 8:30 a.m.
Respondent.) Ctrm: #2
)
)

**RESPONDENT'S MOTION TO STRIKE PETITIONER'S, UNITED STATE'S
ADVISORY TO THE COURT**

1. Respondent, JOHN FERGUSON (Ferguson) hereby moves the Court for an Order striking the Petitioner's, United State's "Advisory to the Court." In support thereof Ferguson represents as follows:
2. The information offered by the Petitioner in his "Advisory to the Court" is hearsay, scandalous, slanderous, and impertinent, and possibly a fraud upon the Court. Moreover, the information offered by AUSA Wright is deceptively depicted as factual events by AUSA Gary W. Wright of which he has no personal knowledge, and, which he knows is a lie given the fact that Wright has in his possession the transcript of Ferguson's 1 February appearance before the IRS in response to the administrative summons which is the subject of this action. Additionally, AUSA Gary W. Wright would necessarily have had access to the tape recording and/or transcript of Ferguson's 1 June appearance in order to make any meaningful claim regarding that appearance. (A transcript of the 1 June hearing has since been sent to AUSA Wright by Ferguson.) This is the second time AUSA Gary W. Wright has egregiously lied to this Court. Ferguson previously gave Wright the benefit of the doubt, which Ferguson now

retracts in view of Wright's latest intentional prevarications.

3. Further, AUSA Wright does not verify his representations in his "advisory" under penalties of perjury, on either information and belief or as being within his personal knowledge, much less being competent to testify thereto if called upon to do so, because he can't. This is possibly the only reason that saves him from sanctions. If AUSA Wright's representations made in his "advisory" are to be believed Wright should be sworn and made to testify thereto, under penalties of perjury.

4. Additionally, the Court record in this case shows Attorney Wright's representations to be a blatant lie, and border line, if not outright, fraud upon the Court.¹ *Fierro v. Johnson*, 197 F.3d 147, 154 (5th Cir. 1999) (To establish fraud on the court, it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its discretion, such as fabrication of evidence); *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); *Root Refin. Co. v. Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948) 7 J. Moore, *Federal Practice*, ¶ 60.33 at 510-11. *England v. Doyle*, 281 F.2d 304, 309-10 (9th Cir. 1960). *Pumphrey v. Thompson Tool Co.*, 62F.3d 1128, 1130 (9th Cir. 1995)." *Herring v. U.S.* 424 F.3d 384 (2005). *See H.K. Porter Co. Inc. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976) (dicta) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F.2d 1072, 1079 (2nd Cir. 1972); *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989).

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Ferguson requests the Court to take judicial notice of the record in this case, specifically, the summons hearing transcripts dated February 1, 2011 and June 1, 2011, attached as Exhibits to Ferguson's Appendices.

CONCLUSION

The petitioner's, United State's "Advisory to the Court" ought to be stricken from the record and not considered for any purpose during the contempt proceedings, or for any other matter or reason, other than sanctions. Additionally, while Ferguson understands that to seek sanctions he would have to submit a separate motion, Ferguson will leave it to the Court to determine appropriate sanctions, if any, as to which AUSA Wright and his conduct should be subjected.

Dated this 10th day of May 2011.

Respectfully Submitted,



John Ferguson, Respondent, *pro se*
18905 IH 35 N Lot 114
Schertz, TX 78154-9504

CERTIFICATE OF SERVICE

I, John Ferguson, a Citizen of the state of Texas who is over the age of 21, do hereby certify that I have sent the following documents -

Respondent's Motion to Strike Petitioner's, United State's Advisory to the Court

Certificate of Service

to the party(ies) indicated hereinafter, via the United States Postal Service, First Class Mail, postage having been pre-paid, on this 10th day of June 2011.

John E. Murphy, United States Attorney
Gary W. Wright, AUSA
601 N.W. Loop 410, Suite 600
San Antonio, Texas, 78216-5512
Tel. (210) 384-7340
Fax (210) 384-7312


John Ferguson, Respondent, *pro se*
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Schertz, TX 78154-9504